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IN THE

Supreme Court of the United States

October Term, 1958

No. 376

In the Matter of

ABRAHAM TEITELBAUM,

an Attorney.

Petition for a Writ of Certiorari to the Supreme Court of Illinois.

ABRAHAM TEITELBAUM,
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ABRAHAM TEITELBAUM,

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Petition for a Writ of Certiorari to the Supreme Court of Illinois.

May It Please the Honorable Judges of the Supreme Court:

Petitioner Abraham Teitelbaum is acting as his own attorney, having been duly admitted to practice law before this Honorable Tribunal in 1931, and prays that a Writ of Certiorari issue to review and reverse the judgment of the Supreme Court of Illinois which suspended petitioner from the practice of law for a period of three years on May 21, 1958. The petition for rehearing was denied on June 18, 1958, and this petition for Certiorari is brought within the ninety day statutory period.

Opinions Below.

The opinion of the Supreme Court of Illinois sought to be reversed is reported in Volume 13, 2d Series, Illinois Advance Sheets (Pet. App. "A"), also reported in 150 N. E. 2d 873.

The opinion of the United States District Court for the Northern District of Illinois, Eastern Division, has not been reported in the Federal Supplements, but is set forth on pages 62 and 63 of the Abstract of Record (Pet. App. "B").

The opinion of the United States Court of Appeals for the Seventh Judicial Circuit is reported in 253 F. 2d 1 (Pet. App. "C").

Jurisdiction.

The jurisdiction of this Honorable Court is invoked under Section 1257, Subsection 3, of Chapter 81, Title 28, United States Code Annotated, and under the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. The applicability of the Full Faith and Credit Clause is also of major importance.

Question Presented.

There is only one question to be decided by this Honorable Court.

In Illinois there is no State Income Tax law. The United States District Court, and the United States Court of Appeals in two separate opinions decided that Petitioner did not commit any act involving moral turpitude in the two income tax cases over which the Federal courts had exclusive jurisdiction.

Query? Can the Supreme Court of Illinois afterwards take an opposite view, and overrule the Federal court decisions, and order the suspension of Petitioner from the practice of law on the ground that moral turpitude existed?

Statement.

Petitioner is a lawyer duly admitted to practice before the Supreme Court of Illinois in 1929, that he was also duly admitted before all the United States courts.

The undisputed facts are as follows:

Petitioner was twice indicted for income tax violation of Section 145(b) of the Internal Revenue Code of 1939. The District Court Judge J. Sam Perry disregarded the guilty verdict of the jury and suspended the imposition of any sentence. Petitioner then entered a plea of *nolo contendere* to the second charge and the same court on October 4, 1956, entered a misdemeanor sentence of twelve months which was suspended and a probation order of 12 months was imposed.

Subsequently the United States District Attorney brought disbarment proceedings against Petitioner. The case was referred to the Executive Committee and the three District Court judges decided that one judge would hear the cause and render a decision for the entire court. On March 12, 1957, the Honorable Philip L. Sullivan, Chief Justice of the United States District Court filed his memorandum opinion for the entire court. This decision held that Petitioner committed no act involving moral turpitude in either of the cases (App. "B").

This decision was then appealed to the United States Circuit Court of Appeals which dismissed the appeal of the District Attorney and rendered its opinion (App. "C").

No further appeal was undertaken and the opinions of the Federal courts became final and binding.

Afterwards, the Chicago Bar Association through its Grievance Committee filed disbarment proceedings against

Petitioner and in the hearings introduced two probation orders and then rested their case contending that the income tax convictions *per se* was ground for disbarment. No further evidence was offered by the committee. The Respondent who is the Petitioner herein offered the two certified copies of the United States Court opinions among twelve other exhibits which were refused admission into evidence. The tendered exhibits as set forth in the Abstract of Record clearly proves an absence of any moral turpitude on the part of Petitioner.

The Supreme Court of Illinois on May 21, 1958, entered the order suspending Petitioner from the practice of law for a period of three years. The lengthy opinion takes a contrary view to the Federal court's decisions notwithstanding the fact that the Federal courts had exclusive jurisdiction of the subject matter.

Similar Cases Decided by This Honorable Court.

In the case of *Schware v. Board of Bar Examiners of New Mexico*, cited in 253 U. S. 232, decided on May 6, 1957, by Mr. Justice Black, and concurred in by the entire court, Mr. Justice Frankfurter wrote a concurring opinion joined into by Messrs. Justices Clark and Harlan.

The opinion in part is brought out in the footnote of the opinion on page 239, citing *Ex parte Garland*, 4 Wall. 333, 379, syllabus (d), whether the practice of law is a "right" or a "privilege" need not here be determined, it is not a matter of the State's Grace, and a person cannot be barred except for valid reasons.

The question presented is whether Petitioner has been denied a license to practice law in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

On page 238 the Court held:

"A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravent the Due Process or Equal Protection Clause of the Fourteenth Amendment citing Dent v. West Virginia, 129 U. S. 114; Slochower v. Board of Education, 350 U. S. 551; Weiman v. Updegraff, 344 U. S. 183; Ex Parte Secombe, 19 How. 9, 13. A state can require high standards of qualifications, such as good moral character or proficiency in its law, but any qualification must have a rational connection with applicant's fitness or capacity to practice law. Douglas v. Noble, 261 U. S. 165, Cummings v. Missouri, 4 Wall. 277, Nebbia v. New York, 291 U. S. 502."

On page 239:

"Even in applying permissible standards, officers of a state cannot exclude an applicant when there is no basis for their finding that he fails to meet those standards or when their action is invidiously discriminatory." (Citing *Yick Wo v. Hopkins*, 118 U. S. 356.)

Held: State deprived Petitioner of due process; judgment reversed and cause remanded for proceeding not inconsistent with opinion.

In case of *Konigsberg v. State Bar of California*, cited in 253 U. S. 252, decided May 5, 1957, the facts were that petitioner sought review of the State Supreme Court's decision contending that the Committee's action deprived him of the rights secured by the Fourteenth Amendment. The syllabus is reaffirmed on page 258 of the opinion. The Court held:

"This Court has jurisdiction to review the case and the constitutional issues are properly here. The constitutional questions presented were substantial."

On page 257 the Court further said:

> "The Committee's action prevented him from a living by practicing law. This deprivation has grave consequences for a man who has spent years of study and a great deal of money in preparing to be a lawyer."

The State's refusal to admit Petitioner to the bar, was a denial of due process and equal protection of laws in violation of the Fourteenth Amendment. Judgment was reversed.

The Attorney General of the United States in the recent meeting of the American Bar Association on August 27, 1958, stated, "The United States Supreme Court is the Supreme Law of the land, and compliance with its decisions is inevitable."

Like bankruptcy cases, income tax matters are exclusively within the jurisdiction of the Federal Courts especially so where the state has no income tax law. In the case of *In re Harry Jacobs*, cited in 7 Fed. Supp. 749, in which matter Petitioner was the attorney for the successful party twenty-five years ago. The Court held that the Federal courts have exclusive, paramount and superior jurisdiction to the state courts in bankruptcy matters. On page 755 the court held, "accordingly the report of the master that the Bankruptcy Court has exclusive and paramount jurisdiction in this case and may order the property of a debtor in the custody of another court (state) to be delivered to a receiver or other officer appointed by the court is approved and confirmed. This decision was rendered by the late Justice Walter C. Lindley who subsequently became judge of the United States Circuit Court of Appeals for the Seventh Circuit.

Conclusion.

In conclusion, it is respectfully urged that the State Court did not give full faith and credit to the decisions of the Federal Courts which could easily set a bad precedent, and in the interest of justice and because of the other reasons hereinabove set forth, Petitioner prays that this petition for a Writ of Certiorari to the Supreme Court of Illinois be granted.

Respectfully submitted,

ABRAHAM TEITELBAUM,
Petitioner, Attorney Pro Se.

APPENDIX "A."

Opinion of Supreme Court of Illinois.

BE IT REMEMBERED, that afterwards, to-wit on the 21st day of May, 1958, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to wit:

Docket No. 34490—Agenda I—March, 1958. *In re* Abraham Teitelbaum, Attorney, Respondent.

Mr. JUSTICE HOUSE delivered the opinion of the court:

The Committee on inquiry of the Chicago Bar Association filed a complaint against the respondent, Abraham Teitelbaum, with the Committee on Grievances, sitting as commissioners of this court. The charges arose out of his conviction by a jury of income tax evasion in one case, and his conviction upon a plea of *nolo contendere* in another. The commissioners recommended that respondent be disbarred. He has filed exceptions to their report and has brought the record here for review.

The first indictment was returned in the United States District Court for the Northern District of Illinois, Eastern Division, on January 22, 1953. It charged the respondent in six counts with violating section 145(b) of the Internal Revenue Code of 1939, (26 U. S. C. sec. 145(b).) by wilfully and knowingly attempting to defeat and evade a large part of the income taxes due from a corporation of which he was president, and individual taxes due from him and his wife for the years 1946 and 1947. Respondent was tried before a jury on January 25, 1956, and found guilty as charged. On October 4, 1956, Judge J. S. Perry adjudged him guilty but suspended the imposition of sentence and placed him on probation for twelve months.

The second indictment in two counts was returned against respondent in the same court on September 27, 1955, for the evasion of income taxes allegedly due from him and his wife for the years 1950 and 1951. On August 29, 1956, respondent withdrew his prior plea of not guilty and filed a plea of *nolo contendere,* whereupon he was committed to the custody of the Attorney General for imprisonment for a period of twelve months, but the execution of sentence was suspended and he was placed on probation for twelve months.

The Committee introduced certified copies of the indictments and convictions and rested its case. It charged that by reason of the conviction respondent was guilty of misconduct involving moral turpitude, conduct which tends to bring the legal profession into disrepute and conduct unbecoming a member of the legal profession.

Respondent testified that prior to his trial on the first indictment he received an assessment notice setting forth that he owned $340,000 in taxes, interest and penalties, and that he paid that amount in full. He stated his reason for the *nolo contendere* plea to the second indictment was that he was impoverished by his payment of the first assessment and was not financially able to defend. A number of character witnesses testified on respondent's behalf. He then tendered certain documentary proof and made offers of testimony which were denied. The proffered evidence dealt largely with the facts leading up to the indictments and the Committee refused them in evidence on the ground that they tended to go into the merits of the convictions which were conclusive. Respondent asserts that they should have been admitted since they establish that moral turpitude was not involved.

The Board of Managers of the Chicago Bar Association did, according to its order, consider the refused evidence only on the question of possible mitigation of the discipline to be recommended. The evidence so offered is in the record and available to this court.

We have adopted and adhered to the rule in disbarment proceedings, that conviction of a crime involving moral turpitude is conclusive evidence of an attorney's guilt and is ground for disbarment. (In re Needham, 364 Ill. 65; In re Carr, 377 Ill. 140; In re Pontarelli, 393 Ill. 310.) Therefore, the primary issue before us is whether moral turpitude is involved in respondent's convictions under section 145(b).

Our attention is directed to the fact that section 145(b) of the Code defined wilful violation thereof as a felony, while wilful violation of section 145(a) is classified as a misdemeanor. The fact that the convictions were for *mala prohibita* rather than *mala in se* offenses is commented upon, leaving the inference that moral turpitude is involved only in the latter. Whether a conviction is for a felony or a misdemeanor, (see In re Alschuler, 388 Ill. 492,) or whether the offense was *malum prohibitum* rather than *malum in se* (as in the Needham and Carr cases), is not the basis for disciplinary action in this State. Rather, the conviction of any crime which involves moral turpitude is *per se* ground for disbarment or other disciplinary action under our rule.

Moral turpitude has often been set up as a test. It can be applied in an infinite variety of situations by legislative enactment as well as judicial decision. It is for this reason that it eludes a precise definition which will cover all cases. Without attempting to limit the meaning of the

phrase, we think it elementary that fraud or fraudulent conduct on the part of an attorney resulting in his conviction necessarily carries the connotation of moral turpitude. The case of In re Needham, 364 Ill. 65, involved a disbarment proceeding following a conviction for use of the United States mails for the purpose of obtaining money and property of others by means of fraud and false pretenses. We there said, at page 70: "Attempting to obtain the money or property of others by fraud or false pretenses, whether through the use of the mails or otherwise, involves moral turpitude." The Supreme Court of the United States in Jordan v. De George, 341 U. S. 223, 95 L. ed. 886, used the following language in regard to this question, at page 227: "Without exception, federal and state courts have held that a crime in which fraud is an ingredient involves moral turpitude." And again, at page 228 it was said: "In the state courts, crimes involving fraud have universally been held to involve moral turpitude," and the Needham case was cited in the footnotes. (L. ed. p. 890.)

In re Tinkoff, No. 23356, involved a disbarment proceeding arising out of the conviction of Paysoff Tinkoff for wilfully attempting to defeat and evade the payment of taxes due the government from persons for whom he acted as attorney. He was disbarred by the order of this court, entered without opinion, on June 9, 1937. Respondent argues that there is a distinction in that there Tinkoff acted as counsel for others and here Teitelbaum was acting on his own behalf. This is a distinction without a difference. The fraudulent act of an attorney in his own behalf is no less reprehensible than acting on behalf of a client. In each case he seeks personal gain, directly or indirectly, to the detriment of honesty. It

is interesting to note that the Federal court, while holding that our disbarment order was not conclusive in a proceeding for disbarment in a Federal district court, disbarred him because of his conviction. See In re Tinkoff, 101 F. 2d 341.)

The record of conviction of respondent is conclusive of his guilt and it has been established in this State that we cannot go behind such record. (In re Needham, 364 Ill. 65; In re Pontarelli, 393 Ill. 310.) We therefore turn to the record of his convictions to ascertain whether fraudulent conduct was involved.

Section 145(b) reads in part: "Any person * * * who willfully attempts in any manner to evade or defeat any tax imposed by this chapter, or the payment thereof, shall * * * be guilty of a felony * * *." It will be noted that section 145(b) is not specifically couched in terms of fraud but speaks in terms of willful intent to evade. A conviction under the section necessitates a finding that the willful-intent-to-evade element therein was proved. In our view such a finding tends strongly to import fraud in a prosecution thereunder. Furthermore, each of the six counts of the indictment of January 22, 1953, charged that the respondent "did wilfully and knowingly attempt to defeat and evade a large part of the taxes due" by filing a "false and fraudulent" tax return (or income tax return) in violation of section 145(b) of the Internal Revenue Code. The verdict read, "We, the Jury, find that defendant, Abraham Teitelbaum guilty as charged in the indictment." The judgment read, in part: "It is adjudged that the defendant is guilty as charged and convicted." Both counts of the indictment returned on September 27, 1955, made charges in substantially identical language. The judgment on this

indictment reads in part: "It is adjudged that the defendant has been convicted upon his plea of nolo contendere * * * (and) it is adjudged that the defendant is guilty as charged and convicted."

Despite the charge of fraud in each of the indictments respondent did not move to quash but went to trial on one indictment and pleaded *nolo contendere* to another. He now, in effect, seeks to attack the indictments collaterally and have us go behind the convictions. If actual fraud in the commission of an offense involves moral turpitude, and we so hold, then respondent's convictions under unchallenged indictments charging fraud establishes moral turpitude and summary disciplinary action was properly invoked on the records of the convicting court. In order to avoid seeming harshness in this particular case, since we disbarred in the Needham disciplinary action where fraud was both an element of the crime and charged in the indictment, we have examined the proof tendered by respondent to ascertain if it disproves fraud. Actually it confirms a continued course of evasive conduct. The evasion of taxes was not confined to a single instance but was in four separate years, 1946, 1947, 1950 and 1951, and was in substantial amounts. For example, the amount of taxes, exclusive of interest and penalties, due from respondent in the years 1946 and 1947 was in excess of $24,000 and $45,000, respectively, and substantially similar amounts were due from his wife in the same years. The evidence offered wholly fails to show an absence of fraud.

Respondent cites several cases from foreign jurisdictions in support of his contention that moral turpitude is not involved. The case of Kentucky State Bar Association v. McAfee, (K.) 301 S. W. 2d 899, reveals that

a copy of the brief filed in the Supreme Court of California in the case of In re Hallinan, 272 P. 2d 768, was attached to the respondent's brief and the Kentucky court stated that it "fully covers the question of whether a conviction for failure to file a Federal Income Tax return involves moral turpitude. A reading of this brief convinces us that it does not." The Kentucky case did not involve conviction under section 145(b), but under section 145(a).

In re Hallinan, (Cal.) 272 P. 2d 768, involved a disbarment proceeding for conviction under section 145(b), and the court held that an intent to defraud is not an essential requirement of section 145(b) and that a conviction thereunder does not necessarily involve moral turpitude. A motion to dismiss was denied and the cause was referred to the board of governors for a hearing on the question of whether moral turpitude was involved. Thus, contrary to our procedure, inquiry was extended beyond the conviction. In the second opinion, (In re Hallinan, 307 P. 2d 1), following the hearing ordered, the respondent was suspended. In commenting upon the argument that "moral turpitude is not involved in the evasion of income taxes wherein the offender is penalized for keeping his own money, not for taking someone else's," the following excerpt was quoted from the first Hallinan opinion at page 3: "We see no moral distinction between defrauding an individual and defrauding the government [citation], and an attorney, whose standard of conduct should be one of complete honesty [citation], who is convicted of either offense is not worthy of trust and confidence of his clients, the courts, or the public * * * since his conviction of such crime would necessarily involve moral turpitude." It appears, there-

fore, that the California court's view is that summary disciplinary action cannot be taken, but it is noteworthy that, upon facts very simliar to those before us, the court found that the conviction did involve moral turpitude.

The last case cited by respondent is Baker v. Miller, (Ind.) 138 N. E. 2d 145, wherein a divided court inferentially overruled a number of previous cases and held that moral turiptude is not necessarily essential to the crime prescribed by section 145(b). Its decision was based upon its interpretation of the law as pronounced by the United States courts. (But see, analysis of Federal cases in Chanan Din Khan v. Barber, 147 F. Supp. 771.)

The overwhelming weight of authority seems to be that conviction of a crime wherein fraud is an element involves moral turpitude. We are not disposed to change our views hereinbefore expressed.

One of respondent's refused exhibits was a memorandum opinion of United States District Judge Philip L. Sullivan, wherein a petition to strike respondent's name from the rolls of the United States District Court was denied. An appeal was taken to the United States Court of Appeals for the Seventh District, and, upon motion, that court dismissed the appeal. Respondent contends that the decisions of those courts should be conclusive as *res judicata*. This contention is without merit. Historically in Illinois, the power to regulate the practice of law has been held to be the prerogative of the judiciary. Just as this court has the inherent right to prescribe rules for the study of law and the admission to practice. (In re Day, 181 Ill. 73.) so it has the inherent power to discipline attorneys. (People ex rel. Moses v. Good

rich, 79 Ill. 148; People ex rel. Chicago Bar Assn. v. Czarnecki, 268 Ill. 278; People ex rel. Ludens v. Harris, 273 Ill. 413; In re Roth, 398 Ill. 131.) The power thus vested in us creates a duty which we cannot, and will not, avoid.

Respondent argues that in the event we hold the foregoing decisions are not *res judicata*, that they should be highly persuasive on the qeustion of moral turpitude. This argument overlooks the fact that the district court's decision is based upon its interpretation of the Federal rule that inquiry into the circumstances of the conviction is permitted, while we do not permit such inquiry. On the other hand, those decisions are entitled to consideration on the question of mitigation, since the court which tried defendant found sufficient extenuating circumstances to refuse disbarment in that court. Judge Sullivan's decision, denying the petition for disbarment, was based largely upon the reasons given by Judge Perry for the suspension of sentences in the criminal cases. The latter commented with reference to the first case, that there was much merit in the fact that payment had been made in full prior to the indictment and apparently was impressed with the change in the Government's policy, theretofore followed, or not prosecuting criminally after a jeopardy assessment had been filed. He stated that he did not believe that respondent was told directly that he would not be prosecuted if he paid the assessment, but that he could believe that the respondent and others were told that where payment had been so made that indictments had never followed. Further, comment was made that the respondent had not concealed any gross income but that his offense was concealing or claiming expenditures never made. Judge Perry's reason for probation in the

second case was based on the fact that respondent had suffered a great deal—his loss of practice, and adversities and hardships, in connection with his large family. An appeal was taken from Judge Sullivan's decision to the Court of Appeals for the Seventh District, and an opinion was filed by the court just prior to oral arguments in this cause. A certified copy thereof has been made a part of this record by bench order. The Court of Appeals briefly reviewed the pertinent facts and the action of the district judge. In commenting, it said: "Here the District Court is satisfied to have Teitelbaum's name remain upon the role of attorneys authorized to practice at the bar of that court. The only attempt being made to force the District Court to take a contrary action is by Mr. R. Tieken who happens to be the United States attorney." Again, in granting the motion to dismiss the appeal, the court said: "R. Tieken was not a party to the proceeding below. Actually his status was that of an informer." Thus, while the court refused to review the disbarment proceeding on its merits, the plain language used shows an utter lack of sympathy with the views of Tieken and no disagreement with the holding of the district court.

The commissioners have recommended disbarment because the convictions of respondent involved moral turpitude. We find no fault with their report, since under our decisions the ultimate penalty of disbarment can be invoked. Final responsibility for fixing the punishment, however, rests in this court. After considering the whole record, including the documentary proof and evidence offered, we conclude that there are extenuating circumstances. The Federal court had the advantage of a full and complete hearing. Probation without sentence and sentence with probation were given in separate cases

despite respondent's conviction under a statute which declares its violation to be a felony. The same court refused to disbar or otherwise discipline respondent. The Circuit Court of Appeals refused to consider the appeal on its merits, but in extensive comments showed no disagreement with the action of the district court. It is probable that the Federal courts were impressed, as are we, with the fact that indictment and prosecution followed a jeopardy assessment and payment, contrary to the previous well-known policy of the government in that type of situation.

The respondent deliberately set out to defraud the government of taxes rightfully due through several different returns and must be disciplined. However, under the peculiar circumstances in this case and the action taken by the Federal courts, we are of the opinion that the interests of justice will be served by suspension rather than disbarment. We therefore suspend respondent from the practice of law for a period of three years.

Respondent suspended.

APPENDIX "B."

Opinion of the United States District Court.

Respondent's Refused Exhibit No. 14. Opinion of Judge Philip L. Sullivan of the United States District Court denying petition to disbar Respondent from practicing law in the Federal Court.

UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

In the Matter of ABRAHAM TEITELBAUM; 56 C 1926

MEMORANDUM.

This petition, presented by the United States Attorney for the Northern District of Illinois, requests that Respondent's name be stricken from the roll of this court as attorney, counselor, advocate and proctor of this court. The grounds for the petition are that respondent was found guilty after trial under an indictment charging him with wilful attempted evasion of income taxes for the years 1946 and 1947; and was found guilty after entering a plea of *nolo contendere* to another similar indictment covering the years 1950 and 1951, all in violation of Title 26, U. S. C. §145(b).

The petition is brought under the authority of Rule 8(b) of this court which provides for an order of disbarment for one who "has been convicted of a felony.". The parties devote considerable attention to a discussion of whether or not the crime of which respondent was convicted is a felony. This question is not decisive. Even though a felony be involved this court has authority to inquire into the circumstances of the conviction to determine whether the

drastic penalty of disbarment is warranted. (In Re Tinkoff 101 F. 2d 341 at 343 (C. A. 7, 1939) (cert. den. 308 U. S. 552.)) As one court has put it "This court cannot bring itself to say that a willful attempt to evade a tax imposed by statute, even if defined by the statute as a felony, should automatically disbar an attorney from his profession." (Baker v. Miller, 11/15/56, Indiana Supreme Court, 25 L. W. 2221.)

The unvarying test in Illinois is that disbarment is warranted when moral turpitude is involved in a conviction. (In Re Pontarelli, 393 Ill. 310 (1946).) That is not necessarily so involved in the case of a conviction for income tax violations under Sec. 145(b) of the Internal Revenue Code has been held in the deportation cases. (U. S. v. Day, 51 F. 2d 1022 (C. A. 2, 1931); U. S. v. Neelly, 208 F. 2d 337 (C. A. 7, 1953).) And Baker v Miller, just cited, held that such a conviction did not necessarily involve the "moral turpitude" necessary to disbarment.

Without reciting the facts in detail, it is sufficient to say that this court is satisfied, after an examination of the records in the two income tax cases, that the sentencing judge did not regard the convictions as of crimes involving moral turpitude. In suspending sentence and giving probation, Judge Perry gave his sufficient reasons for so doing.

In view of the particular facts here, and in the light of Baker v. Miller, supra, the petition is denied.

PHILIP L. SULLIVAN,
Judge.

3/12, 1957.

APPENDIX "C."

Opinion of the United States Circuit Court of Appeals

In the United States Court of Appeals for the Seventh Circuit. No. 12100. September Term, 1957-January Session, 1958.

Filed March 12, 1958.

In the Matter of Abraham Teitelbaum. Appeal of R. Tieken, United States Attorney for the Northern District of Illinois.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

March 5, 1958

Before DUFFY, *Chief Judge*, and HASTINGS and PARKINSON, *Circuit Judges*.

DUFFY, *Chief Judge*. R. Tieken is the United States Attorney for the Northern District of Illinois. Mr. Tieken requested and received permission to file with the United States District Court for the Northern District of Illinois, a petition asking that Abraham Teitelbaum, an attorney licensed to practice at the bar of that Court, be disbarred. Under the rules of the District Court the petition was referred to the Executive Committee of that Court which was composed of three judges. This Committee referred the matter to Honorable Philip L. Sullivan who is now Chief Judge of that Court.

The petition alleged Teitelbaum had been found guilty of felonies on two occasions, the offense charged in each case being a wilful attempt to evade income tax in violation of Title 26 U. S. C. A. §145(b). Teitelbaum filed an answer denying he had been convicted of felonies and alleged that in one case sentence had been suspended, and

that the second case involved a misdemeanor. Mr. Tieken filed a reply submitting the text of the judgments in the two cases. No oral testimony was taken. After considering the pleadings, the record and the briefs, Judge Sullivan filed his decision denying the petition for disbarment. Mr. Tieken filed a notice of appeal to this Court. He made no request of the District Court for permission to prosecute this appeal.

It is a rare situation indeed where a United States District Court has determined an attorney should not be disbarred, that anyone has claimed the authority to bring such a decision before an appellate court for review. We know of only one such case,[1] and there the question was presented in an entirely different posture. Here the District Court is satisfied to have Teitelbaum's name remain upon the role of attorneys authorized to practice at the bar of that Court. The only attempt being made to force the District Court to take a contrary action is by Mr. R. Tieken who happens to be the United States Attorney.

Mr. Tieken argues that the offenses charged in the two criminal prosecutions were, in fact, felonies. He then points to local Rule 8 of the Rules of the District

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[1]Re Noell, 93 F. 2d 5, and Blanton, U. S. v. Noell, 93 F. 2d 7, were treated by the Court as one case although separate opinions were written. Noell was brought before the Court of Appeals in an original proceeding because a state court had disbarred him for two years. Largely because of the manner in which the disbarment was handled, the United States Court of Appeals refused to disbar. However, there was also the proceeding where the United States Attorney had petitioned for an order to show cause why Noell's name should not be removed from the role of attorneys in the United States Court. The Court of Appeals ordered an affirmance of the District Court order. No question was raised in the case as to the right or authority of the United States Attorney to file a petition for an order to show cause.

Court for the Northern District of Illinois which states that an attorney who has been convicted of a felony shall be disbarred.

The prosecutions of Teitelbaum for income tax evasion were before Judge J. Sam Perry of the United States District Court for the Northern District of Illinois. Judge Perry handled the cases in some respects as though the convictions had been for misdemeanors. He did not impose any sentence in the first case, but imposed probation for a period of twelve months. It appears this prosecution was conducted a considerable period after a jeopardy assessment had been levied and the amount claimed to be due had been paid with penalties and interest. In fact, Teitelbaum claimed that he was unable to defend the second prosecution because the government had impoverished him, and he had no funds to employ an attorney. He entered a plea of *'nolo contendere* to the second charge and Judge Perry imposed a sentence of twelve months but immediately suspended same, and placed Teitelbaum on probation for twelve months. The two periods of probation were concurrent. Judge Perry also commented: "A mitigating factor was Teitelbaum's honesty in listing all of his gross income in his returns."

However, we do not reach the case upon the merits. A motion to dismiss the appeal was timely made but was denied without prejudice to renew same at the time the case was submitted on oral argument. The motion to dismiss has been renewed. For reasons hereinafter stated we think the motion must be granted.

R. Tieken was not a party to the proceeding below. Actually, his status was that of an informer. As a member of the bar of that Court he was completely within his

rights in calling the attention of the Court to the alleged misconduct of one of its officers. He adopted correct procedure in asking leave of the Court to file his petition. However, there is nothing about his official position as United States Attorney which permits him to decide as to the moral fitness of attorneys to practice at the bar of the District Court of the Northern District of Illinois, or to decide which attorneys should be stricken from the roles. The responsibility of maintaining the integrity of the bar of that Court rests in the Court itself. We think Mr. Tieken had no standing as a party or otherwise to bring this appeal. The motion to dismiss the appeal must be and is

GRANTED.

A true Copy:

Teste:

/s/ Kenneth J. Carrick
Clerk of the United States Court of Appeals for the Seventh Circuit.